

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA

Civil Action No.3:06-CV-00178

RHONDA C. DAVIS,

Plaintiff,

Vs.

TRANS UNION LLC, and  
STERLING AND KING, INC.,

Defendants.

**DEFENDANT STERLING AND KING, INC.'S MOTION TO SET ASIDE ENTRY OF  
DEFAULT**

**AND MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION,  
LACK OF PERSONAL JURISDICTION, INSUFFICIENT PROCESS, INSUFFICIENT  
SERVICE OF PROCESS, AND FAILURE TO STATE A CLAIM UPON WHICH  
RELIEF CAN BE GRANTED**

NOW COMES Defendant Sterling and King, Inc. ("Sterling and King") and moves the Court, pursuant to Rule 55(c) of the Federal Rules of Civil Procedure, to set aside the Entry of Default entered against Sterling and King on June 21, 2006. In the event the Entry of Default is Set Aside, Sterling & King, pursuant to Rule 12(b)(1)(2)(4)(5) and (6), also moves to dismiss Plaintiff's complaint. In support of these motions, Sterling and King shows the Court as follows:

1. This action was originally commenced in the North Carolina General Court of Justice in the Mecklenburg County Superior Court. On April 13, 2005, Defendant Trans Union LLC filed a notice of removal.
2. Prior to the removal of this action, Sterling and King had not been served with the state court action.

3. As evidenced by the affidavit of John W. Taylor, attorney for Plaintiff, Plaintiff attempted service on Sterling & King by depositing a copy of the "Summons and Complaint" in a Federal Express drop box on April 21, 2006, after the state court action had been removed.

4. The summons deposited in the Federal Express drop box and delivered to Sterling and King was issued by the Mecklenburg County Superior Court.

5. No federal court summons was ever issued or served on Sterling and King. Accordingly, Plaintiff's attempted service on Sterling & King after removal and the Entry of Default are void as a matter of law. Because a valid and effective process has never been issued nor served on Sterling and King, this Court lacks jurisdiction over Sterling and King, and Plaintiff's action should be dismissed as a matter of law.

6. In addition to the above grounds, good cause exists for setting aside the Entry of Default. Sterling & King has meritorious defenses to Plaintiff's claims, and Plaintiff's claims, in any event, are not sufficiently stated to allege valid causes of action or to invoke the subject matter jurisdiction of this Court.

7. In support of these motions, Sterling & King relies upon the attached affidavits and exhibits, as well as the memorandum of law filed contemporaneously herewith.

This the 1st day of August, 2006.

POYNER & SPRUILL LLP

/s/ Joshua B. Durham

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of August, 2006, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

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